

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

21370

FILE: B-186974

DATE: August 19, 1976 98655

MATTER OF: American Can Company - Reconsideration

## DIGEST:

1. Protest filed with bid is untimely where GAO Bid Protest Procedures require protest to be filed prior to bid opening.
2. Untimely protest challenging agency regulation which was first published approximately 3 years prior to filing of protest is not matter of widespread procurement interest involving exception to timeliness rule.

American Can Company has requested reconsideration of B-186974, July 30, 1976, 76-2 CPD \_\_\_, in which we declined to consider its protest because of untimeliness.

American Can protested that a solicitation for tissue paper (IFB FPOP-FY-54621-A) issued by the General Services Administration (GSA) unlawfully limited competition by requiring that the paper be comprised of minimum percentages of reclaimed paper fiber. The requirement for the provision was originally published on October 25, 1973, at 38 Fed. Reg. 29470 (1970).

Bids were opened at 11 a.m. on June 16, 1976. The protest, however, was delivered to this Office at 12:01 p.m., on the date of bid opening. The time of receipt was entered on the protest envelope. Accordingly, we considered the protest to be untimely filed in accordance with Section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. 20.2(b)(1) (1976), which requires that a protest alleging an impropriety in an IFB be filed prior to bid opening.

The protester suggests that its protest was actually delivered prior to the time of bid opening, but that "some delay in its processing caused it to be recorded as having been received after the bid opening." However, we have confirmed that the time of receipt entered on the protest represents the actual time of receipt.

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The protester also points out that its bid transmittal letter indicated that the bid was submitted subject to protest, and therefore the protest was filed before the exposure of bids. We have held, however, that the incorporation of a protest into a bid package submitted in response to a formally advertised procurement, as here, results in no more than the assertion of the protest at bid opening, rather than prior thereto as required by our Bid Protest Procedures. See Emerson Electric Co., B-184346, September 9, 1975, 75-2 CPD 141; B-178817, June 15, 1973.

Finally, the protester contends that this protest raises issues significant to procurement practices and procedures, and that it would be in the interest of all concerned to resolve the issue in advance of the next procurement. We cannot agree. The significant issue exception to our timeliness standard has reference to the presence of a principle of widespread procurement interest. 52 Comp. Gen. 20 (1972). We are not inclined to view a late protest challenging a requirement first published in 1973 as coming within this provision. Moreover, we believe that the question, should it arise again, may best be resolved in a timely bid protest. As we stated in our prior discussion of this protest:

"We believe that it would be unfair to those other bidders who participated in good faith in the procurement to have their bids rejected after exposure of bids because of an alleged defect which was certainly apparent to the protester long before bid opening."

For the foregoing reasons, we remain of the opinion that the protest is inappropriate for consideration by our Office.

Deputy

*R. F. Kistner*  
Comptroller General  
of the United States